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7 CLASSIFICATION STANDARDS REGULATION

8 CONSULTATION MEETINGS

9 WITH THE WHITE EARTH NATION

10 taken on July 18, 2006

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20 Reported by Sherry G. Auge, RPR
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22 Minneapolis, Minnesota 55343
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1 The Consultation Meeting with the WHITE EARTH
2 NATION, was taken before Sherry G. Auge, a notary
3 public in and for the County of Washington, State
4 of Minnesota, on July 18, 2006, taken at the
5 Sheraton Hotel, Lounge No. 3, 7800 Normandale
6 Boulevard, Bloomington, Minnesota, commencing at
7 approximately 11:30 a.m.

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9 A P P E A R A N C E S:

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11 ON BEHALF OF THE NATIONAL INDIAN GAMING
12 COMMISSION:

13 PHILIP N. HOGAN, Chairman of the National
14 Indian Gaming Commission, 1441 L Street NW, Suite
15 9100, Washington, D.C. 20005;

16 CLOYCE V. CHONEY, Chairman of the National
17 Indian Gaming Commission, 1441 L Street NW, Suite
18 9100, Washington, D.C. 20005;

19 JOSEPH M. VALANDRA, Chief of Staff of the
20 National Indian Gaming Commission, 1441 L Street
21 NW, Suite 9100, Washington, D.C. 20005;

22 NATALIE HEMLOCK, Special Assistant to the
23 National Indian Gaming Commission, 1441 L Street
24 NW, Suite 9100, Washington, D.C. 20005;
25 PENNY COLEMAN, Acting General Counsel for the

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1 National Indian Gaming Commission, 1441 L Street
2 NW, Suite 9100, Washington, D.C. 20005;

3 MICHAEL GROSS, Senior Attorney for the National
4 Indian Gaming Commission, 1441 L Street NW, Suite
5 9100, Washington, D.C. 20005;

6 JOHN R. HAY, Staff Attorney for the National
7 Indian Gaming Commission, 1441 L Street NW, Suite
8 9100, Washington, D.C. 20005;

9 JOHN PETERSON, Regional Director for the
10 National Indian Gaming Commission, St. Paul Office,
11 190 East 5th Street, Suite 170, St. Paul, Minnesota
12 55101;

13 ALLEN PHILLIPS, Field Investigator, 801 I
14 Street, Sacramento, California 95814.

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16 ON BEHALF OF THE WHITE EARTH NATION:

17 ERMA VIZENOR, Chairwoman;

18 JOSEPH PLUMER, Tribal Attorney, White Earth
19 Tribal Court, P.O. Box 418, White Earth, Minnesota
20 56591.

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1 WHEREUPON, the following proceedings were duly
2 had:

3 COMMISSIONER HOGAN: We'll go ahead and
4 start the proceeding. We're convened here with the
5 National Indian Gaming Commission and the White
6 Earth Tribe's delegation addressing the proposed
7 regulations that the National Indian Gaming
8 Commission published in the Federal Register on
9 May 25 of this year that relate to the definitions
10 and the classifications of Class II equipment, as
11 opposed to Class III equipment, that tribes might
12 use. Class III, of course, requires the compact,
13 and Class II equipment can be played without a
14 compact.

15 We're convened on the 18th of July in
16 Bloomington, Minnesota, and I'm Phil Hogan,
17 Chairman of the National Indian Gaming Commission.
18 Commissioner Chuck Choney is the other member of
19 Commission right now. Seated next him is Joe
20 Valandra, the Chief of Staff, and Natalie Hemlock
21 is the Assistant to the Commission with our

22 Washington office. Seated next to the reporter is
23 Penny Coleman our Acting General Counsel. From her
24 office Attorney Michael Gross with John Hay. John
25 Peterson, who I think you know, is our Regional

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1 Director from the St. Paul office, and Kevin (sic)
2 Phillips is with us here from our Sacramento office
3 who's assisting with these regulations.

4 That's who we are, and we're eager to hear from
5 White Earth with respect to your views of these
6 proposed regulations. We know that Class II is an
7 active project on your reservation, and I've had
8 the opportunity to go up there and look at some of
9 the things you've been doing. So why don't you
10 introduce yourselves for the record, and then, we'd
11 love to hear what you have to offer.

12 MS. ERMA VIZENOR: Thank you,
13 Mr. Chairman. My name is Erma Vizenor. I'm Tribal
14 Chair for the White Earth Nation in Northern
15 Minnesota. I have with me today legal counsel, Joe
16 Plumer, Tribal Attorney. And, of course, thank you
17 for this opportunity to meet with you and to meet
18 with the Commission and attorneys.

19 And Class II is a very important issue to the
20 tribe, and because we are actively engaged in it
21 and have had some discussions with the Commission,

22 so -- and some visits, so I would like to turn this
23 over to Joe Plumber, and he can introduce himself
24 for the record.

25 MR. JOSEPH PLUMER: Okay. Thanks, Erma.

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1 Joe Plumer, again, is my name. I'm a tribal
2 attorney for White Earth. And Mr. Chair and
3 others, we have some concerns about the
4 distinctions, and first off, it's a little
5 confusing to me and to our people who work up at
6 the Shooting Star exactly how these regulations are
7 gonna be interpreted.

8 As you know, we do have the off-sites, you
9 know, up at White Earth that we license and
10 regulate, and these are all within the exterior
11 boundaries. And some of them are owned and
12 operated by non-Indian establishments, but using
13 the Indian lands decision and exercising our
14 authority, we think we're doing a good job at it,
15 but we think the definition that's in the Federal
16 Register might knock us out of eligibility using
17 these Cadillac Jack games. That's a practical
18 concern.

19 We don't believe that it is, but we believe
20 that somebody might interpret these regulations to
21 mean that the Cadillac Jack is now, all of a

22 sudden, a Class III game. We realize that there's
23 lots of negative commentary from people,
24 surrounding communities, State of Minnesota, etc.
25 We have a lot of things going on that are all kind

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1 of lining up that are making us a lightning rod
2 right now, you know, not only this issue, but,
3 also, our casino fee-to-trust issue, and some other
4 things that we're exercising.

5 And we don't want these regulations to give the
6 State any extra leg-up over us in what we've been
7 doing, because we believe we've been doing a very
8 responsible job of it. And we don't want the
9 regulation, first, to be read so narrowly as to
10 be -- us be left with offering unattractive games,
11 and on the other hand, if we want the attractive
12 games, have to go through all the hoopla of having
13 a Class III compact, because it wouldn't be
14 financially worth it for us and for the small
15 off-sites that we regulate. So that's our biggest
16 concern.

17 COMMISSIONER HOGAN: Yeah. Certainly,
18 it's a valid concern, and we have written a number
19 of advisory opinions. Cadillac Jack is one of the
20 vendors, one of the games, that we have done this
21 with, and each time a new device comes in the door,

22 and we get asked to write an advisory opinion, we
23 scratch our heads and realize that this designer
24 came up with something we didn't think of when we
25 did it the last time.

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1 And it's a difficult, painful, and expensive
2 exercise to go through those advisory opinions, and
3 they really aren't as useful as they might be, that
4 is, they aren't final Commission action, and so
5 forth, and so we decided, let's try to do it a
6 different way. Let's try to put this in regulatory
7 form, and once we get this done, and, hopefully, do
8 it right, then, there won't be any argument between
9 the State and the Tribe and the vendor or whatever.
10 There will be a protocol there. If it does, this
11 is a Class II, end of story.

12 Now, we hope that changes, if they are
13 necessary, from what's on the floor right now, to
14 what might comport with the final regulations,
15 won't be so dramatically different that it will
16 completely make the game no longer profitable or no
17 longer fun or whatever, and we think we're on the
18 right track, but we are listening to the tribes and
19 hearing about different scenarios.

20 And White Earth certainly has a different model
21 out there than many of the others we've heard about

22 with your licensed facilities on a large
23 reservation where you have, in fact, nontribal
24 folks, actually, running them and so forth. And
25 we're trying to take that into consideration, but

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1 it's the need for this clarity, rather than just a
2 hazy, well, it can be a technologic aid to Class
3 II, but it can't be an electronic facsimile of a
4 game of chance or it's Class III, and not really
5 knowing where that line is, is always asking for a
6 fight or, you know, there's a cloud of uncertainty
7 hanging over it. And so, we hope to get there with
8 the right set of regulations.

9 And it's not like we just dreamed this up
10 yesterday. We published five proposed versions of
11 these regulations. Each time, I think, going in a
12 little different direction than we started in,
13 trying to make it fast, fun, but keep that
14 recognizable difference that Congress said there
15 needed to be between Class II and Class III.

16 I wish we had a crystal ball that said, this
17 was the perfect place, but since we don't have
18 that, we're engaging in consultation in trying to
19 get the best advice we can as we get there.

20 MR. JOSEPH PLUMER: I understand that, Mr.
21 Chairman, and, again, I'm not able to give, like, a

22 play-by-play comment on all the -- this looks like
23 it was made more for a manufacturer, frankly,
24 and -- but I understand that that's probably the
25 need. Our biggest concern in coming here is we

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1 want to make sure that our off-site regulation is
2 protected.

3 We don't want what we've developed -- and we
4 believe, we've done a good job of developing it and
5 maintaining it -- we don't want it to go away,
6 because that exercise of our sovereignty is working
7 in other areas, and we want to keep that upstroke
8 going.

9 COMMISSIONER HOGAN: Well, the problem
10 with the advisory opinion approach is --

11 MR. JOSEPH PLUMER: I understand.

12 COMMISSIONER HOGAN: -- one of these days,
13 those machines are gonna get old and, maybe,
14 obsolete, and then, Cadillac Jack, or whoever, will
15 have to go back to the Office of General Counsel
16 and say, write us a new opinion. And the question
17 will be, is this machine, is that really the same
18 model that was addressed in the opinion.

19 And if we have a set of regulations, and the
20 approach they take is, we don't look at the
21 machine. We don't have our own laboratory, rather

22 the vendor with the tribe will go to a recognized
23 gaming laboratory, like GLI or BMM, whoever, and
24 they'll take that thing apart and certify, this
25 does comply, if it does, with those regulations,

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1 and then, you're good to go. And if they've got an
2 upgrade, a new model, they take that in and say,
3 this is all the same, except now, this chip does
4 this or that. Will you certify it again, and
5 you're not back to square one.

6 So, hopefully, this will accommodate changes in
7 technology, keep things modern, not create a
8 bureaucratic bottleneck at NIGC. But what's
9 important is that we get it right to begin with, so
10 we don't make the model so restrictive nobody wants
11 to play the game, or VFW club, or whoever, is gonna
12 say, what are we doing this for, and nobody's gonna
13 come in our door.

14 MR. JOSEPH PLUMER: That's our concern,
15 yeah.

16 COMMISSIONER CHONEY: Right now, there's
17 some confusion out there in the industry on Class
18 II. Some states, like Oklahoma, and other states
19 where they do both Class II and Class III, some of
20 the vendors are trying to convince the tribes to
21 buy this machine. Trust us. It's Class II, when,

22 in fact, it's not. It's what they call a gray
23 area, or Class II-and-a-half, and we tell them,
24 there's no such thing as Class II-and-a-half.
25 Well, with these new regulations, we're trying

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1 to alleviate this confusion. That way, once you
2 have these new regulations in place, once you have
3 them in your hand and you go shopping for new
4 machines to replace the old ones that are now
5 getting obsolete, when you want to go to a new
6 style of game, you'll have those regulations in
7 hand, and you'll know what you can buy or what you
8 can lease. Hopefully, this confusion will no
9 longer be there.

10 MR. JOSEPH PLUMER: I understand that
11 that's the good part of it. There will be some
12 knowledge ahead of time, and it won't be a dice
13 roll. If it's okay with the Commission, we
14 wouldn't mind digressing a little bit on the
15 off-site -- the class regulation of our Class II
16 off-sites, in those other proposed regulations.

17 COMMISSIONER HOGAN: If I understand, what
18 you're suggesting is, we've more or less completed
19 the classification discussion, and you're ready to
20 go --

21 MR. JOSEPH PLUMER: (Attorney nodded.)

22 COMMISSIONER HOGAN: Okay. Then, for the
23 record, we thank you for coming to Minneapolis to
24 consult with us on the classification process.
25 We'll go off the record, and we'll discuss these

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1 other issues.

2 (Whereupon, the proceedings concluded at
3 approximately 11:55 a.m.)

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1 STATE OF MINNESOTA)
) SS
2 COUNTY OF WASHINGTON)

3 Be it known that I took a verbatim record of
the National Indian Gaming Commission's
4 Consultation Meetings regarding Classification
Standards Regulations on July 17, 2006, at The
5 Sheraton Hotel, 7800 Normandale Boulevard,
Bloomington, Minnesota 55439;

6 That I was then and there a notary public in
and for the County of Washington, State of
7 Minnesota, and that by virtue thereof I was duly
authorized to administer an oath but did not;

8 That the conversations of said participants was
recorded in stenotype by myself and transcribed
9 into typewriting, and that the Consultation
Meetings is a true record of conversations given by
10 the participants to the best of my ability;

That I am not related to any of the parties
11 hereto nor interested in the outcome of the action;

That I am not financially interested in the
12 action and have no contract with the parties,
attorneys, or persons with an interest in the
13 action that affects or has a substantial tendency
to affect my impartiality;

14 That all parties who ordered copies have been
charged at the same rate for such copies;

15

16 WITNESS MY HAND AND SEAL THIS 24th day of July,
2006.

17

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Sherry G. Auge
Court Reporter

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